

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

765

DEC 14 2010

FILE:



Office: MEXICO CITY, MEXICO  
(SANTO DOMINGO, DOMINICAN REPUBLIC)

Date:

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Tariq Syed*  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Acting District Director for further proceedings consistent with this decision.

The record reflects that the applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to seek a benefit through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and the father of a United States citizen child and two United States citizen stepchildren. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife, daughter, and stepchildren.

The Acting District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated July 30, 2008.

On appeal, the applicant, through counsel, claims that the applicant admitted to prior fraud during his marriage interview, and "the consular officer's inadvertent failure to properly inform the [applicant] concerning the requirements for the fraud waiver directly resulted in the denial of the instant 212(i) waiver request." *Form I-290B*, filed August 19, 2008. Additionally, counsel states the applicant's wife will suffer extreme hardship if the applicant's waiver application is denied. *Id.*

The record includes, but is not limited to, statements from the applicant's wife, medical documentation regarding the applicant's daughter's medical condition, a psychoemotional assessment for the applicant's wife, and documents from the applicant's previous marriage and divorce. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the

spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

Section 204(c) of the Act states:

[N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 U.S.C. § 1154(c). The corresponding regulation provides:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

8 C.F.R. § 204.2(a)(ii). A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 359 (BIA 1978). United States Citizenship and Immigration Service (USCIS) may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion, and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

The record establishes that on August 1, 1992, the applicant married his first wife, [REDACTED] in the Dominican Republic. On October 21, 1992, the applicant's wife filed a Form I-130 on behalf of the applicant. On November 4, 1992, the applicant's Form I-130 was approved. At their immigrant interview on November 12, 1996, the applicant was found ineligible for an immigrant visa for having entered into the marriage solely for the purpose of obtaining a visa. On December 31, 1998, the applicant and [REDACTED] divorced. On September 15, 2000, the applicant's approved Form I-130 was revoked. On April 26, 2006, the applicant married his current wife, [REDACTED] a United States citizen, in the Dominican Republic. On October 10, 2006, [REDACTED] filed a Form I-130 on behalf of the

applicant, which was approved on March 21, 2007. On May 19, 2008, the applicant filed a Form I-601 based on his inadmissibility under section 212(a)(6)(C)(i) of the Act. On July 30, 2008, the applicant's Form I-601 was denied. Because the record does not show that the applicant entered into his marriage to [REDACTED] in good faith and not for the purpose of evading the immigration laws of the United States, the AAO must conclude that the applicant's prior marriage is within the purview of section 204(c) of the Act as a marriage entered into for the purpose of evading the immigration laws. In that the applicant's prior marriage has been found to have been entered into for the purpose of evading the immigration laws of the United States, he is permanently barred from obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c). In light of this permanent bar, no purpose would be served in addressing the applicant's contentions regarding his eligibility for an extreme hardship waiver of inadmissibility under section 212(i) of the Act.

Pursuant to 8 C.F.R. § 205.2, the approval of an I-130 petition is revocable when the necessity for the revocation comes to the attention of USCIS. Therefore, the AAO remands the matter to the Acting District Director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the Acting District Director will issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should it be determined that the applicant is not subject to section 204(c) of the Act, and that the Form I-130 is not to be revoked, then the Acting District Director will issue a new decision addressing the merits of the applicant's Form I-601 waiver application. If that decision is adverse to the applicant, it will be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

**ORDER:** The matter is remanded to the Acting District Director for further proceedings consistent with this decision.